

**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**"A MARKING DEVICE, A METHOD OF USING THE SAME AND AN ACCESSORY KIT FOR THE MARKING DEVICE"**

Case No. EVS-P-99-017, the specification of which

(check X is attached hereto.  
 one)        was filed on                                 , as  
 Application Serial No.                                   
 and was amended on                                 .  
 (if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims as amended by any amendment referred to above.

I acknowledge the duty to disclose to the United States Patent Office all information which is known to me to be material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, 1.56(a)<sup>1</sup>.

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, and I believe that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as identified below:

I hereby claim foreign priority benefits under Title 35, United States Code, 119 of any foreign application(s) for patent or inventor's certificate listed below:

Prior Foreign Application(s)

<sup>1</sup>(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of unpatentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

002220-28001560

Applicant(s) or Patentee(s) Paul A. Smith  
 Serial or Patent No. \_\_\_\_\_  
 Filed or Issued: \_\_\_\_\_  
 For: "A MARKING DEVICE, A METHOD OF USING THE SAME AND AN ACCESSORY KIT FOR THE MARKING DEVICE"

Attorney's  
 Docket No. EVS-P-99-017

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS**  
**(37 CFR 1.9(f) & 1.27(c)) - SMALL BUSINESS CONCERN**

I hereby declare that I am

- ☐ the owner of the small business concern identified below:  
☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN Eversharp Pen Company  
 ADDRESS OF CONCERN 9240 West Belmont, Franklin Park, IL 60131

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention "A MARKING DEVICE, A METHOD OF USING THE SAME AND AN ACCESSORY KIT FOR THE MARKING DEVICE" by inventor Paul A. Smith

- ☒ the specification filed herewith  
☐ application Serial No. \_\_\_\_\_, filed \_\_\_\_\_  
☐ Patent No. \_\_\_\_\_, issued \_\_\_\_\_

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e). NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date and which status as a small entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Paul A. Smith

TITLE OF PERSON OTHER THAN OWNER President

ADDRESS OF PERSON SIGNING Eversharp Pen Company, 9240 W. Belmont, Franklin Park, IL 60131

SIGNATURE *Paul A. Smith* DATE 2/22/2000

Number Country Date  
and have also identified below any foreign application for patent or inventor's certificate having a filing date  
before that of the above listed application on which priority is claimed:  
Prior Foreign Application(s)

Number Country Date

If no priority is claimed, I have identified all foreign patent applications filed prior to this  
application:

Prior Foreign Application(s)  
Number Country Date

And I hereby appoint Brian M. Mattson (Reg. No. 35, 018) and Stephen T. Scherrer (Reg. No.  
45,080) of the firm of Patents+TMS, A Professional Corporation as my attorneys with full power of  
substitution and revocation, to prosecute this application and to transact all business in the Patent and  
Trademark Office connected therewith and direct that all correspondence be forwarded to:

Patents+TMS  
A Professional Corporation  
1914 N. Milwaukee Avenue  
Third Floor  
Chicago, IL 60647  
Telephone: 773/772-6009

I hereby declare that all statements made herein of my own knowledge are true and that all  
statements made on information and belief are believed to be true; and further that these statements were  
made with the knowledge that willful false statements and the like so made are punishable by fine or  
imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false  
statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor Paul A. Smith

Inventor's signature  Date 2-22-2000

Residence GLENVIEW, IL 60025

Citizenship U.S.A.

Post Office Address 2311 MOHAWK LANE, GLENVIEW, IL 60025

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